

UNITED STATES DISTRICT COURT.
DISTRICT OF NEW JERSEY
Civil Action No. 08-1290

In Regard to the Matter of:

Bayside State Prison
Litigation

OPINION/REPORT
OF THE
SPECIAL MASTER

KEITH JOSEY

-vs-

WILLIAM H. FAUVER, et al,
Defendants.

* * * *

FRIDAY, JANUARY 9, 2009

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BEFORE THE HONORABLE JOHN W. BISSELL, SPECIAL MASTER

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Transcript of proceedings in the above
matter taken by Theresa O. Mastroianni, Certified
Court Reporter, license number 30X100085700, and
Notary Public of the State of New Jersey at the
United States District Court House, One Gerry Plaza,
Camden, New Jersey, 08102, commencing at 10:22 AM.

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ATTORNEYS FOR THE DEFENDANTS

1 JUDGE BISSELL: We're now reopening the
2 record in the case of Keith Josey, docket number
3 08-1290.

4 This opinion/report is being issued
5 pursuant to the directives of the Order of Reference
6 to a Special Master and the Special Master's
7 Agreement and the guiding principles of law which
8 underlie this decision to be applied to the facts
9 upon which it is based as set forth in the jury
10 instructions in the Walker and Mejias jury charges to
11 the extent applicable to the allegations of Mr.
12 Josey.

13 As finalized after review under Local
14 Civil Rule 52.1, this transcript will constitute the
15 written report required under paragraph seven of the
16 Order of Reference to a Special Master.

17 Mr. Josey, during the period of the
18 lockdown at Bayside, was not a Bayside inmate. He
19 was an inmate housed at Southern State Prison who was
20 sent to Bayside daily as part of a special detail to
21 work in the Bayside kitchen. The Bayside kitchen has
22 been described here from time to time as a sizeable
23 unit which, among other things, prepared food not
24 only for the Bayside Prison itself but for other
25 institutions.

1 Because the Bayside Prison population
2 that normally worked that kitchen was in lockdown and
3 because there at least had to be limited meal
4 service, basically sandwiches and the like into the
5 units during the lockdown, the kitchen had to be
6 manned and they looked to inmates with appropriate
7 security classifications or as Mr. Josey described
8 it, "status", that would allow them to undertake this
9 work. And he was one of a detail of several persons
10 awakened approximately five AM every morning at
11 Southern State Prison and cuffed and then moved
12 across the street basically from Southern State to
13 Bayside through the West Sally Port and into the
14 kitchen area to handle kitchen duties.

15 It seems he was assigned almost
16 inevitably and universally to the washing of large
17 pots and pans. And this continued day after day for
18 at least six days, once again on 12-hour shifts. His
19 hands became parboiled, he became fed up with the
20 job, he developed stomach trouble, he became
21 extremely tired from this work, (and not surprisingly
22 so), and became irritated. And in the course of
23 time, frankly, he became a complainer and hence a
24 source of irritation to the ITIs and Bayside
25 Corrections Officers charged with the administration

1 and/or security for the kitchen area.

2 More particularly one Officer Corson
3 was predominantly in charge, although there was a
4 Captain Loveman to whom he reported that had at least
5 some authority, which I'll develop in a moment.

6 So approximately six days or so in came
7 the day of Officer Baker's funeral. Officer Corson
8 attended the funeral and thus was not on duty to
9 supervise the activities of the kitchen on that
10 occasion.

11 I find that Mr. Josey on that day had a
12 confrontation with one of the ITIs who was handling
13 the activities of the kitchen as such regarding what
14 was perceived to be an overly extensive bathroom
15 break. Also in the course of those discussions and
16 confrontation Mr. Josey further complained about the
17 tedium of his job. And I find that, in fact, to some
18 extent his complaints were affecting the performance
19 and the attitude of others on this kitchen crew, some
20 of whom at least also came from Southern State.

21 The ITI summoned a supervisor and in
22 this case it happened to be Captain Loveman; once
23 again given the fact that Mr. Corson was at the
24 funeral. Captain Loveman came down and "counseled"
25 Mr. Josey. In fact, I'm sure he reprimanded him and

1 confronted him with his actions and indicated that
2 this type of conduct was inappropriate. At least as
3 of the short run on that day, that particular
4 incident appeared to be concluded.

5 On the next day, however, Officer
6 Corson was back on duty. He learned from several
7 persons in the kitchen, including one or more ITIs,
8 about Mr. Josey's events of the day before and
9 particularly the fact that Captain Loveman had been
10 summoned. Apparently reports had also been generated
11 with regard to the incident.

12 Not surprisingly, Officer Corson was
13 displeased with this. Captain Loveman was his
14 superior. The orderly maintenance of the kitchen was
15 assigned to Mr. Corson, but he certainly had a valid
16 excuse or leave to go to the funeral. He obviously
17 was not pleased with the fact that in his absence an
18 incident like this had occurred which had required a
19 captain's intervention. And needless to say that
20 reflected negatively upon him. He also, of course,
21 had a history, even during that brief time period, of
22 having to deal with Mr. Josey and criticize his work
23 habits.

24 Mr. Josey testifies that on or about
25 that day he was summoned to the dock under a ruse

1 that led to his being beaten at the direction of Mr.
2 Corson and with the assistance of a Bayside Quick
3 Response Team.

4 Frankly, I find that's not exactly what
5 happened. Mr. Josey, taking a break or perhaps
6 undertaking some assignment on the adjacent loading
7 dock was there and Officer Corson came out of the
8 kitchen area to criticize, confront and to chastise
9 Mr. Josey for his actions of the previous day.

10 I find that Officer Corson accurately
11 describes the events of that day as follows on pages
12 200 and 201 of the transcript of June 18th, 2008.

13 "Question: Now, when you went out to
14 the dock, what did you see that day?

15 "Answer: From what I remember he was
16 just standing out there when I went out. I tried to
17 talk to him. He was aggravated. I said something to
18 him about the captain coming in, he didn't respond.
19 And I said something to him about eyeing down the
20 female ITI and all that, and he struck me in my
21 chest.

22 "Question: When he struck you, how did
23 he strike you on your chest?

24 "Answer: With an open hand and just
25 pushed me off.

1 "Question: How forceful was it?

2 "Answer: It knocked me back a foot or
3 two.

4 "Question: Was he -- when he did that,
5 what was his demeanor towards you?

6 "Answer: He was extremely aggravated
7 at that point.

8 "Question: Do you recall if when he
9 was --contemporaneously when he was making this
10 action, did he say anything to you profane or angry
11 or anything?

12 "Answer: He was cursing at me, cursing
13 that he just didn't want to be there.

14 "Question: Do you remember exactly
15 what he said?

16 "Answer: He said fuck this bullshit
17 several times.

18 "Question: Do you remember anything
19 else that he said to you at that time?

20 "Answer: No, sir.

21 "Question: After he made those
22 comments and struck you, then what happened next?

23 "Answer: From what I can remember, I
24 was telling him to put his hands down. I tried to
25 keep myself between him and the kitchen to keep him

1 out on the dock area. I seen -- I seen officers
2 coming."

3 Now, at this point the officers did,
4 indeed, come from a sort of bubble office area that
5 is on the West Side Sally Port Dock. It's a station
6 for BSP's Rapid Response Team. These officers
7 described both in this case and others also wear the
8 same type of riot gear that the SOG officers were
9 wearing, but they are not SOG officers here, they are
10 part of the BSP correction officer population.

11 James Whildin, one of the Response Team
12 members, described the events which followed. I find
13 that testimony credible.

14 Some four to six people came to
15 confront the situation which they had observed as an
16 assault by Mr. Josey upon Officer Corson. And that,
17 of course, is a serious and inexcusable event. Mr.
18 Whildin testified that they first tried to apprehend
19 Mr. Josey in an upright position against the wall,
20 but he resisted, once again consistent with his level
21 of aggravation for any number of reasons. So the
22 Response Team had to take him down in order to cuff
23 him and lead him away. I find that in taking
24 plaintiff down to the pavement his face was scraped
25 on the cement pavement which is a rather rough

1 surface. That's what showed up both at the infirmary
2 and in the Internal Affairs photographs which were
3 admitted in evidence and, of course, which I have
4 examined.

5 He was not beaten with any sticks or
6 fists. The force that was used to bring him to the
7 ground was only reasonable force under the
8 circumstances. In this case the team responded to
9 what it had observed through the Sally Port window.
10 As I mentioned before, a serious matter that
11 warranted neutralizing of this inmate.

12 The resistance of the plaintiff I find
13 to be credibly described. And once again, it's
14 consistent with his truculent attitude in the kitchen
15 and in the frustration that had risen in him and
16 which had led him to strike Officer Corson.

17 I considered also Mr. Josey's
18 testimony about the importance to him of his status,
19 about his discussions with his mother about trying to
20 just tow the line and do what he was told. And I
21 have no reason to question his sincerity or his
22 effort to do that, but whether it's his personality,
23 the circumstances that confronted him with this six
24 days of 12-hour shifts or maybe a combination of that
25 and other factors, Mr. Josey basically on this

1 occasion snapped. When he did so, he struck Officer
2 Corson, and the ensuing events are the direct result
3 of that activity.

4 Mr. Josey has also alleged that when he
5 was taken to B Unit he was beaten there. However,
6 the photographs taken do not substantiate that. His
7 complaints about such injury and the like are purely
8 subjective and unsustained here.

9 Finally, although not every item of
10 evidence has been discussed in this opinion/report,
11 all evidence presented to the Special Master was
12 reviewed and considered.

13 For the reasons set forth above, I
14 recommend in this report that the district court
15 enter an order and judgment of no cause for action
16 with regard to Keith Josey.

C E R T I F I C A T E

I, Theresa O. Mastroianni, a Notary Public and Certified Shorthand Reporter of the State of New Jersey, do hereby certify that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place, and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.

Theresa O. Mastroianni

Theresa O. Mastroianni, C.S.R.
Notary Public, State of New Jersey
My Commission Expires May 5, 2010
Certificate No. XI0857
Date: January 15, 2009

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January 9, 2009

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